IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11454 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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HARSHADBHAI BHIKHABHAI PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2, 4,
MR IM PANDYA OVERNMENT PLEADER for Respondent(s) : 3,
MR M.IQBAL A SHAIKH for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 26/09/2006

ORAL JUDGMENT

1. By way of this petition, the detenu has challenged the order of District Magistrate, Kheda at Nadiad dated 02.05.2006 passed in exercise of powers under Section 3(2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (“P.B.M. Act” for short), detaining him.

2. The brief facts of the case are that on 13.04.2006, premises of the detenu was raided by the Authority and it was found that the detenu was involved in unauthorized purchase and selling

of L.P.G. Thereafter, the detenu came to be detained by the Authority vide impugned order.

3. The detenu has challenged the order of detention by this petition under Article 226 of the Constitution on various counts. However, learned Advocate appearing for the detenu, has restricted his arguments to the one aspect only that once the order of detention was approved by the State Government on 12.05.2006, the Authority had no power to consider and reject the representation made by the detenu vide order dated 15.05.2006. In support of his case learned Advocate for the detenu has placed reliance on an unreported decision of this Court passed in S.C.A. No.6157 of 2000 in the case of ***"Kanubhai B Patel vs. State of Gujarat"*** dated 13.10.2000 wherein at Para-2 it was held as under,

> **"2.** The detenu has challenged the order of detention on various grounds. However, Ms. Kachhavah, learned advocate appearing for the petitioner, has pressed only one contention. She submitted that the **order of detention was approved by the Government on January 25, 2000. A representation was**

> **made on behalf of the detenu to the detaining authority on the 24th June, 2000 and the detaining authority received the same on the 26th June, 2000. The detaining authority rejected the representation on the very same day. Ms. Kachhavah submitted that the detaining authority could not have rejected the representation. The authority was required to forward the same to the Government for its consideration as the detention was already approved by the Government on January 25, 2000 and the detaining authority had become functuous officio.** In support of her argument, she has placed reliance on the decisions of this Court in the case of Urmilaben Navnitlal Gandhi v. Commissioner of Police, 1994(2) GLH (U.J.) 10 and Salim Pothiyu Rehmanbhai Belia v. District Magistrate and Ors, 1994(2) GLH (U.J) 11."

3.1 He has further submitted that in the case on hand, since the order of detention was approved by the State Government on 12.05.2006, the Authority had become functuous officio, and hence, it ought to have forwarded the representation made by the detenu to the State Government. On the contrary, the Authority rejected the aforesaid representation made by the detenu vide order dated 15.05.2006, and hence, the impugned order deserves to be quashed and set aside.

4. On the contrary, Mr. Pandya, learned A.G.P. has supported the order of detention on behalf of the detaining authority and the State Government and Mr. Shaikh, learned Counsel for the Central Government has supported the order of detention on behalf of the Union of India.

5. Heard. Considering rival side contentions the only question that needs to be addressed by this Court is whether the Authority was justified in rejecting the representation made by the detenu, once the order of detention was approved by the State Government.

5.1 There is no dispute that a representation dated 09.05.2006 was made on behalf of the detenu which was received by the Authority on 15.05.2006. It is also not in dispute that the order of detention was approved by the State Government on 12.05.2006. Therefore, it was incumbent on the concerned Authority to forward the representation made by the detenu to the

State Government since it had no power to decide the representation made by the detenu, once the order of detention was approved by the State Government. Hence, the Authority has committed an error in rejecting the representation made by the detenu. In view of the above discussion as well as in view of the unreported decision of this Court in the case of ***"Kanubhai B Patel vs. State of Gujarat"*** this petition deserves to be allowed.

6. In the result, the petition is allowed. The impugned order of detention passed by District Magistrate, Kheda at Nadiad dated 02.05.2006 is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if he is not required in connection with any other case by the Authority. Rule is made absolute with no order as to costs.

(K.S. Jhaveri,J.)

Umesh/